

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairperson Ruth Teichman at 9:30 a.m. on March 11, 2004 in Room 234-N of the Capitol.

All members were present except:

Senator Adkins-Absent
Senator David Corbin- excused

Committee staff present:

Bill Wolff, Legislative Research
Ken Wilke, Office of the Revisor of Statutes
Nancy Shaughnessy, Committee Secretary

Conferees appearing before the committee:

Kevin Glendening, Kansas Banking Commission
Whitney Damron, Payday Loan Association
Pam Scott, KS. Funeral Director's Assoc.
Jarrod Forbes, KID
Diane Nygarrd, KTLA

Others attending:

See Attached List.

The Chair requested a motion to approve the minutes from Feb. 18th-19th. Senator Brungardt makes a motion to approve. Senator Barnett seconds. Motion passes.

The Chair opened the hearing on **HB 2685—Payday loans, the regulation thereof.**

Kevin Glendening, proponent of the bill said that the amendments (Attachment 1) on the bill will clarify and strengthen existing consumer protections contained in the law and represent reasonable regulatory requirements that do not place unwarranted burden on the industry. The amendments can be grouped into general areas, 1) Loan structure and handling issues and 2) Prohibited activities and business restrictions.

Whitney Damron, testified as a proponent on the bill (Attachment 2). He stated that the KPLA has established a working relationship with the Kansas Banking Commission. The bill contains a number of consumer friendly amendments to current law and will be readily incorporated by the payday loan industry.

The Chair indicated that El Centro had provided written testimony on the bill (Attachment 3).

The hearing was closed on **HB 2685** and the hearing opened on **HB 2597—Insurance; elimination of required errors and omissions coverage for insurance agents.**

Pam Scott testified as a proponent of the bill (Attachment 4). The KFDA requested the legislation to amend Kansas Statutes to eliminate the requirement that Kansas insurance agents maintain errors and omissions insurance coverage as a condition of licensure in the State.

In 2001 KFDA introduced a similar bill which would have eliminated the errors and omissions requirement for agents who were sole licensed to sell pre-arranged funeral plans. Objections resulted because there was a lack of understanding as to why these agents with such a limited license were being singled out for exemption.

This year the legislation is requesting that the elimination of this requirement for all insurance agents. Kansas is one of only two states that requires this coverage. Non-resident agents doing business in the state are not required to have the coverage and this puts Kansas agents at a competitive disadvantage.

Many insurers will likely continue to require that their agents have errors and omissions coverage. Consumers may choose to purchase coverage only from agents maintaining such coverage.

CONTINUATION SHEET

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE at 9:30 a.m. on March 11, 2004 in Room 234-N of the Capitol.

Senator Buhler inquired about why the bill was originally focused narrowly and why it has been so broadly expanded. Isn't the coverage fairly inexpensive? Pam Scott responded that it was not inexpensive and it was fairly difficult to find. Generally insurance agents are in support of the exemption and that is why the legislation was expanded to all agents.

Jarrold Forbes testified as a proponent on the bill (Attachment 5) indicating that the Kansas Insurance Department and the Commissioner are supportive of the legislation.

Diana Nygarrd, KTLA testified as an opponent of the bill (Attachment 6) and expressed her concern about the elimination of the E&O requirement. She represents many people who have invested their savings with a financial service agent.

Many times these "financial planners" are only licensed as an insurance agent. There is a concern that passage of the bill would again reduce a barrier to entry to the "financial planning" business, which puts investors at great risk of loss of their hard-earned savings.

If someone is a funeral director the bill may be onerous, however if a person is a mainstream insurance agent, they have minimal requirements for their agents, as opposed to their competitors, a securities broker who, have stringent regulation requirements. Ms. Nygarrd stated that, if anything, regulatory requirements for insurance agents should be increased.

Senator Barnett inquired about why the KID was in support of this bill when it seemed to not be consumer friendly. Jarrold Forbes responded that he believed that E&O insurance would not cover the kind of incidents to which the conferee was referring. The incidents described sound more like fraud than errors and omission.

The hearing was closed on **HB 2597**.

The Chair stated that she wished to work a couple of bills and opened **HCR 5027-Concurrent resolution urging the Insurance Department and Insurance Commissioner to pursue creation of interstate compact**. She stated that Senator Adkins previous concerns had been addressed satisfactorily and she would entertain a motion to move **HCR 5027** to the consent calender.

Senator Barnett made the motion to move the resolution to the consent calender. Senator Steineger seconds. Motion passed.

The Chair wished to work a bill that was heard yesterday. **SB 546-Insurance:transfer and novation of insurance contracts and group life**. There were some amendments that were suggested. Ken Wilke referenced the balloon that was attached to Mr. Smoot's bill. The language inserted after line 24 that would increase the definition of policyholder. There are a couple of minor technical changes and then staff feels the bill is complete. The Chair asked for a motion to accept the bill and amendment and move it out.

Senator Helgerson made the motion to pass the bill out favorably as amended. Senator Brungardt seconds. Motion passes.

The meeting adjourned at 10:31 A.M.

The next meeting is scheduled for March 16th, 2004.

SENATE FINANCIAL INSTITUTIONS & INSURANCE

Date: 3-11-04

Name:

THURSDAY

Representing:

Janal Leber

KID

Jan Swell

Ks funeral Directors Assn

Brod Smoot

Advance / BCBS

Ramie Ann Lower

KATHP

Kevin Glendening

Office of State Bank Comm

Bud Burke

QC Financial

Cheri Frieetschne

Budget

Melinda Lewis

El Centro, Inc.

Lee Wright

Farmers Ins.

Dick Wilborn

Farmers Alliance

LARRY MAGILL

Ks. Assn of INS AGENTS

Christine Greber

Federico Consulting

Jim Byrnes

Sen. Salinas Off

Brod Smoot

Advance

Bill Sneed

KFDA



KANSAS

OFFICE OF THE STATE BANK COMMISSIONER
CLARENCE W. NORRIS, Bank Commissioner

KATHLEEN SEBELIUS, GOVERNOR

March 11, 2004

Senate Committee on Financial Institutions and Insurance

Testimony on HB 2685

Madam Chairman and members of the Committee:

HB 2685 contains several amendments to K.S.A. 16a-2-404 which regulates Payday lending in Kansas. These amendments will clarify and strengthen existing consumer protections contained in the law and, in my opinion, represent reasonable regulatory requirements that do not place unwarranted burden on the industry. The proposed amendments can be grouped into two general categories as follows:

Loan structure and handling issues:

Establish a minimum loan term of seven days and a maximum of three loans to each consumer in any thirty day time period. These amendments are intended to reduce the possibility of lenders "churning" loans to inflate fees charged to borrowers.

Require each check taken as part of a payday loan transaction to be endorsed with language stating criminal prosecution is not permitted. We believe this will reduce the possibility of a borrower being incorrectly charged with a crime by providing an easily identifiable notice to county attorneys.

Provide borrowers the opportunity to rescind a payday transaction without cost within 24 hours of obtaining the loan. This provision would give a no cost option for the consumer to, in effect, change their mind about obtaining the loan.

Reduce the maximum amount of a payday loan to \$500.

Senate FI & I Committee

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Attachment No.: 1

Prohibited activities and business restrictions:

Reinforce the agency's existing position that attempting to utilize an alternative marketing device or other scheme does not circumvent the requirements and regulations governing payday lending in Kansas. In addition, the proposed amendments would prohibit a lender from using the criminal process to collect a loan, or attempting to have a consumer waive any rights in exchange for a loan. Finally, the bill would add a provision that addresses agency relationships, "rent-a-charter" schemes, or other business structures or devices that attempt to circumvent state laws.

As previously stated, I believe these amendments will provide additional worthwhile protections for Kansas consumers and represent reasonable regulation of the industry. I would be happy to answer any questions of the committee. Thank you.



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TESTIMONY

TO: **The Honorable Ruth Teichman, Chair**
 And Members Of The
 Senate Committee on Financial Institutions and Insurance

FROM: **Whitney Damron**

On Behalf Of The
 Kansas Payday Loan Association

RE: **HB 2685 – Payday Loans; Concerning the Regulation Thereof.**

DATE: **March 11, 2004**

Good morning Madam Chair Teichman and Members of the Senate Committee on Financial Institutions and Insurance. I am Whitney Damron and I appear before you today on behalf of the Kansas Payday Loan Association in support of HB 2685.

We met with Mr. Glendening and his staff several times in December and January to review their legislative agenda and discuss the legislative interests of the KPLA as well. We are pleased to note the Kansas Payday Loan Association has developed a good working relationship with Mr. Glendening and the office of the State Bank Commissioner over the past few years.

We believe you will find the payday loan industry to be responsible to their customers and compliant with state laws regarding their industry. HB 2685 contains a number of consumer-friendly amendments to current law and will be readily incorporated by the payday loan industry in our state upon their enactment.

On behalf of the Kansas Payday Loan Association, I thank you for your time and would be pleased to stand for any questions you might have.

Whitney Damron

Senate FI & I Committee

Meeting Date: 3-10-04

Attachment No.: 9

El Centro, Inc.

The Center for Continuous Family Improvement

Administration and Computer Learning Center

650 Minnesota Avenue
Kansas City, KS 66101
913-677-0100

www.ElCentroInc.com

The Academy for Children

1330 S. 30th Street
Kansas City, KS 66106
913-677-1115
913-677-7090 fax

Academy for Children, Choo Choo Child Care

219 S. Mill Street
Kansas City, KS 66101
913-371-1744
913-371-1866 fax

Academy for Children, Donnelly College

608 North 18th Street
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913-281-1700

Casa de Rosina Apartments

851 Barnett
Kansas City, KS 66101

ECI Development, Inc.

2100 Metropolitan Ave.
Kansas City, KS 66106
913-677-1120
913-677-0051 fax

El Centro, Inc. Argentine

1333 S. 27th Street.
Kansas City, KS 66106
913-677-0177
913-362-8520 fax

El Centro, Inc. Family Center, Johnson County

9525 Metcalf Avenue
Overland Park, KS 66212
913-381-2861
913-381-2914 fax

Macías-Flores Family Center

290 S. 10th Street
Kansas City, KS 66102
913-281-1186
913-281-1259 fax

Woodland Hills, Inc.

1012 Forest Court
Kansas City, KS 66103
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913-362-8203 fax



March 11, 2004

Chairperson Teichman
Committee on Financial Institutions and Insurance
Kansas State Capitol, Room 234-N

Payday lending, as it is currently conducted, is a threat to the already-precarious financial security of low-income families and to the economic well being of many Kansas communities. For these reasons, it is of grave concern to El Centro, Inc. and to the low-income families with whom we work. A review of the phone book listings for payday lenders in Kansas City reveals over 60 different payday-lending companies with names, like EZ Cash, Dr. Dollar, Uncle Bucks, and Jiffy Quik Payday, which clearly indicate their incompatibility with how low-income families need to think about finances and asset acquisition if they are to achieve long-term economic stability. Driving along main streets in Topeka, Wichita, Garden City, Great Bend, Liberal, Dodge City, Emporia, and many smaller towns in Kansas demonstrates the degree to which payday lending has institutionalized itself in our communities. Given the kind of impact it has on our most vulnerable families and the ways in which some payday lenders target women moving from welfare to work, minorities, and limited-English speakers, the nearly unchecked growth of this industry is cause for great concern. Because of this concern, we strongly support HB2685 and its efforts to increase the minimum term of payday loans, limit the number of loans that any one borrower can have, ensure that no one is prosecuted criminally for, in good faith, taking out a payday loan that she cannot repay, and perhaps most importantly, to prohibit the agency relationships that currently allow some out-of-state payday loan operators to evade Kansas regulations.

El Centro is not arguing that it should be impossible for these companies to operate. We simply believe that the Kansas Legislature's goals, in regards to payday lending, should be to strengthen regulations, protect consumers, and ensure that all payday lending operations in the state conduct their business in accordance with Kansas statutes. At El Centro, we have new immigrant families, unfamiliar with the U.S. financial system, which are lured by Spanish-language advertisements and compelled by difficult financial realities that create desperate need. While payday lenders are certainly not the cause of these economic crises, the high fees and interest they charge can trap families in cycles of debt from which they cannot escape. This is of particular concern in today's economy, when higher unemployment combine with rising medical costs and other factors to seriously challenge low-income families' economic well-being.

While there is much about payday lending that goes against El Centro's vision of helping families create and sustain assets, what most concerns us about the industry are the high fees, excessive interest, often inadequate disclosures, and the use of the criminal code to pursue low-income families who default under the burden of high costs. We are pleased to see key elements included in the legislation and we believe that HB2685's adoption is an important step in protecting low-income Kansans from unsafe business practices. We are especially encouraged by the section of HB2685 that would prohibit agency relationships, as we know that many of the companies with which our clients have the greatest complaints are not chartered in Kansas and are operating not under Kansas' payday lending laws but under the often more lenient codes of other states. This not only allows companies to exploit customers in ways not permitted in Kansas but also confuses

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Mission Statement: The purpose of El Centro and its subsidiaries is to create and sustain

customers and disadvantages those payday lenders that are earnestly complying with Kansas' restrictions.

El Centro realizes that many payday loan customers are individuals who have difficulty accessing traditional credit, and we fully agree that companies should be allowed to protect their investments as the risk warrants. We personally have experience making small auto loans to low-income individuals as a part of our job-training program, and we realize that default rates on these loans are sometimes higher than the industry average. However, we see no reason why payday lenders deserve the preferential treatment they now receive—charging interest rates over 20 times higher, in many cases, than credit card companies and other underwriters of unsecured debt, circumventing usury laws with few consequences, using county prosecutors as collection agents, and, through reissuing loans and charging high fees, collecting many times the original loan amount from vulnerable borrowers with limited resources. Currently, only approximately 10% of our immigrant families report using payday lenders, but it is our fear that, as we help our families establish utility accounts in their names, open bank accounts, and obtain identification, they will meet payday lenders' underwriting guidelines and will be vulnerable to losing many of the gains they achieve in financial security. The permissive regulatory environment that payday lenders lobbied for in state halls around this country is changing rapidly as the consequences of these businesses on local communities are becoming all too well known. Kansas should be a part of this changing tide, for the economic health and well being of all our of families.

Sincerely,



Melinda Lewis
Director of Policy Advocacy and Research
El Centro, Inc.



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EXECUTIVE DIRECTOR

PAM SCOTT
Topeka

March 11, 2004

To: Senate Financial Institutions and Insurance Committee

From: Pam Scott, Executive Director

Re: House Bill No. 2597

Madam Chair and members of the Committee, thank you for the opportunity to appear before you today on behalf of the Kansas Funeral Directors and Embalmers Association (KFDA) in support of House Bill No. 2597. The KFDA represents over 300 funeral homes across the state of Kansas.

The KFDA requested the introduction of this bill, which would amend Kansas statutes to eliminate the requirement that Kansas insurance agents maintain errors and omissions insurance coverage as a condition of licensure in the state of Kansas.

In 2001, the KFDA introduced a similar bill which would have eliminated the errors and omissions insurance requirements for life insurance agents holding an insurance license for the sole purpose of selling life insurance and annuities to fund prearranged funeral agreements. Kansas law recognizes the limited nature of such a license in that agents holding this limited license are only required to have two hours of continuing education every two years. That bill passed the Senate but did not receive a hearing in the House. Objections were raised that insurance agents holding such a limited license should not be singled out and treated differently than other agents. As a result, this year we asked for the introduction of this legislation which would eliminates the requirement for all insurance agents.

It is our understanding that Kansas is one out of only two states nationwide that require their resident agents to maintain errors & omissions coverage. The other state is Kentucky. While Kansas resident insurance agents are required to maintain the coverage, non-resident agents doing business in Kansas have no such requirement. This puts Kansas agents at a competitive disadvantage. Insurance agents from Missouri and other surrounding states can come into the state of Kansas and compete without having to abide by the same errors & omissions insurance requirements.

I might point out that many insurers will likely continue to require agents selling for their companies to continue to maintain errors and omissions coverage. Consumers may

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also choose to purchase coverage only from agents maintaining such coverage. Nothing in this bill would prevent that.

Funeral directors in Kansas have found that errors and omissions insurance coverage is very difficult to obtain at a reasonable rate. This is especially true if you take into consideration the limited risk involved in the type of business they write. Most funeral directors who hold such a limited insurance license do so only as an ancillary part of their business. Many may only sell a few insurance policies a year. The policies sold are usually single pay with little or no underwriting involved. The value of the policy is small, because the average funeral price is just over \$5000, excluding cemetery expenses.

The policies are generally irrevocably assigned to the funeral home. If there were a problem with the policy, funeral homes would in most cases still provide the funeral services contracted for in the prearranged funeral agreement. The funeral home is the party that would be injured if a mistake is made because they would not be paid for their services.

We would appreciate your support of this bill eliminating the errors and omissions requirements for all agents. Again, thank you for the opportunity to testify. I would be happy to address any questions you may have.



K a n s a s I n s u r a n c e D e p a r t m e n t

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS
ON
HB 2597—EXEMPTION FROM ERRORS AND OMISSIONS COVERAGE
SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
March 11, 2004

Madam Chair and Members of the Committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department. House Bill 2597 would eliminate errors and omissions coverage for all agents selling insurance within the State of Kansas.

The requirement of errors and omissions from a state regulation standpoint has out lived its purpose since the passage of the Gramm-Leach-Bliley Act (GLBA). That federal legislation no longer allows states to impose their errors and omissions coverage requirements on non-resident agents. Currently, Kansas and Kentucky are the only two states requiring such coverage.

By still requiring this coverage, Kansas is placing its own agents at a financial disadvantage when competing with agents in neighboring states. However, it is very important to remember that nothing in this bill changes the ability for a company to require errors and omissions from its agents as part of their employment contracts.

In this post GLBA world of insurance, the department is comfortable with doing away with the regulatory requirement of errors and omissions coverage. We believe it should be a decision made by each company and not a mandate to receive and maintain a license in Kansas.

With that madam chair, I would be happy to stand for any questions the committee may have.

Jarrod Forbes
Legislative Liaison



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

March 11, 2004

To: Members of the Senate Financial Institutions and Insurance Committee

From: Diane A. Nygaard
Kansas Trial Lawyers Association

Re: House Bill 2597 /Changing current law respecting insurance coverage for insurance agents.

Chairman Teichman and the members of the Senate Financial Institutions and Insurance Committee, thank you for the opportunity to appear before you today. I am Diane A. Nygaard and I am appear before you on behalf of the Kansas Trial Lawyers Association.

Thank you for the opportunity to speak in opposition to the proposed legislation. I am an attorney who represents investors who have been defrauded in their investments. I represent many retired people from across Kansas who have entrusted their savings to financial planners, whose only license is an insurance license. Therefore, on behalf of these people, I am speaking against HB 2597. My concern is that it will again reduce a barrier to entry to the "financial planning" business, which puts investors at great risk of loss of their hard-earned savings.

Current law requires that insurance agents have \$100,000 of errors and omissions coverage and that insurance brokers supervising agents have \$500,000 of such coverage. This requirement is consistent with Kansas' tradition of protecting investors. Kansas was the first state in the country to pass a Securities Act. Its "Blue Sky" law was the model on which other states relied in passing similar legislation. It was passed twenty years before the federal securities acts were passed. Kansas laws are designed to prevent the fraudulent sale of investments to Kansans and to assure that defrauded investors can sue to recover their losses due to fraud.

A tremendous change has occurred in the insurance sales business during the last decade. During the 1990's bull market, investors were increasingly interested in stocks, and insurance agents had a hard time selling life insurance. The conventional wisdom became: "Buy term and invest the difference." Because term insurance has relatively

Terry Humphrey, Executive Director

Senate F I & I Committee

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Meeting Date: 03-11-04

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Attachment No.: 6

One such tactic was that insurance agents began to hold themselves out to the public as “retirement specialists”, “Financial Planners” or “Financial Consultants”. None of these designations required proof of any special experience, education or knowledge. In Kansas, many insurance agents holding themselves out as such experts, and using computerized financial planning tools, held seminars on retirement, investing and provided computerized financial plans for potential clients. The goal was to induce people to entrust their life savings to the agents to be invested by them. The agents then sold these people insurance products, such as annuities. The result of this marketing tactic was that insurance agents no longer simply sold insurance policies. Instead, they began investing peoples’ life savings. As a consequence, the investor risked losing all of their money, rather than premiums paid when dealing with an insurance agent. Insurance agents were competing head to head with stockbrokers, but in a less regulated environment, with fewer supervisory requirements that the securities laws require.

My law firm now sees increasing numbers of retired people who have been sold high commission, risky, and illiquid variable annuities for their retirement savings. We have had many cases for people who entrusted all their retirement money from Hallmark, Allied Signal, and other companies to an insurance agent. Sometimes these agents have sold them variable annuities, and have invested in very speculative sub accounts. Many of these salespeople are not licensed securities brokers and are not supervised as closely as securities brokers are. Many planners simply hang out their shingle, or operate from their home. I have seen people lose their entire savings to such salesmen.

Now is not the time to eliminate the relatively small insurance coverage required of insurance agents or brokers. Each day the newspapers are full of the malfeasance of investment advisors and the large losses sustained by investors due to fraud.

Instead, if anything, regulatory requirements for insurance agents should be increased. Insurance agents are more than just insurance sales people now. They are competing with securities brokers. People entrust their life savings to them. Stockbrokers are required to be affiliated with an NASD member firm, which must meet net capital requirements. This requirement is designed to protect investors from loss due to a broker’s theft or malfeasance. It would be extremely unwise for the legislature to eliminate provisions of current law that protect the Kansas investor when dealing with an insurance agent.

One of the changes I have seen in my practice is the enormity of most of our clients’ losses. Our typical retiree from a large company has at least \$600,000 to roll over on retirement. When this amount of money is rolled over to an insurance product sold by an independent insurance agent, more than \$100,000 of coverage should be required.